

In the Matter of Merchant Mariner's Document No. Z-11478 and all other Seaman Documents
Issued to: SAMUEL K. TIMAS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1121

SAMUEL K. TIMAS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 10 February 1959, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a plumber on board the United States SS PRESIDENT CLEVELAND under authority of the document above described, on or about 16 May 1958, Appellant assaulted and battered the ship's laundry foreman, Walter Chang.

After considering the evidence submitted at the hearing, the Examiner concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of twelve months outright and twelve months on twenty-four months' probation.

FINDINGS OF FACT

On 16 May 1958, Appellant was serving as a plumber on the United States SS PRESIDENT CLEVELAND acting under authority of his Merchant Mariner's Document No. Z-11478 while the ship was in the port of Manila, Philippines.

On this date, Appellant was on the pier near the ship when Walter Chang, laundry foreman, approached Appellant and accused him of stealing the coat he was wearing. Appellant denied the accusation and warned Chang to be careful of his language. Chang continued calling Appellant insulting and abusive names. Appellant grabbed Chang, knocked him down, jumped on him and struck him repeatedly in the face although Chang did not strike a single blow. (Appellant was about 100 pounds heavier than Chang.) The pier guards separated the two seamen.

Chang's injuries consisted of a severe contusion of the right eye, contusion of the nose, contusion of the right jaw and cerebral concussion. He was hospitalized for seven days on the ship and received subsequent treatment at a U. S. Public Health Service Hospital in San Francisco. Chang was not declared fit for sea duty

until about two months after this incident. Appellant was not injured.

Appellant has no prior record.

OPINION

This appeal is taken on the ground that the order of suspension is excessive in the light of the evidence in the record.

This contention is without merit. Appellant not only administered a brutal and vicious beating to a seaman who was much smaller than Appellant; but he continued to strike this seaman in the face after he had been knocked down. Admittedly, Chang provoked the incident by his insulting language to Appellant but words alone do not justify assault and battery.

Appellant has given no specific reason for his claim that the order is not justified by the evidence. A minute re-examination of the record is not required under these circumstances. Review of the Examiner's decision is limited to specific exceptions and clear errors on the record. Attorney General's Manual on the Administrative Procedure Act (1947), p. 84, note 5; Commandant's Appeal Decisions Nos. 939, 940, 1005, 1016, 1046, 1070. In view of the blanket nature of this appeal, it is sufficient to state that the Examiner's findings are supported by substantial evidence and the suspension imposed is not excessive on the basis of the findings.

ORDER

The order of the Examiner dated at San Francisco, California, on 10 February 1959, is ~~APPEALED~~ **AFFIRMED**.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 10th day of November, 1959.